

House Bill 1061

By: Representatives Wix of the 33<sup>rd</sup>, Teilhet of the 40<sup>th</sup>, Porter of the 143<sup>rd</sup>, Jamieson of the 28<sup>th</sup>, Powell of the 29<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

To create and establish the "Georgia Right to Self-defense Act of 2006"; to amend Article 2 of Chapter 3 of Title 16 of the Official Code of Georgia Annotated, relating to justification and excuse in criminal prosecutions, so as to provide that under certain circumstances there is no duty to retreat when using force in defense of self or others or in defense of habitation; to create a legal presumption for the reasonable use of force in self-defense cases; to amend Article 1 of Chapter 11 of Title 51 of the Official Code of Georgia Annotated, relating to general provisions for defenses to tort actions, so as to provide immunity from civil action for the use of force in defense of self or others; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

This Act shall be known and may be cited as the "Georgia Right to Self-defense Act of 2006."

**SECTION 2.**

Article 2 of Chapter 3 of Title 16 of the Official Code of Georgia Annotated, relating to justification and excuse in criminal prosecutions, is amended by striking subsection (a) of Code Section 16-3-21, relating to the use of force in defense of self or others and evidence of belief that force was necessary in murder or manslaughter prosecutions, and inserting in its place a new subsection (a) to read as follows:

"(a) A person is justified in threatening or using force against another and does not have a duty to retreat when and to the extent that he or she reasonably believes that such threat or force is necessary to defend himself or herself or a third person against such other's imminent use of unlawful force; however, except as provided in Code Section 16-3-23, a person is justified in using force which is intended or likely to cause death or great bodily

1 harm only if he or she reasonably believes that such force is necessary to prevent death or  
2 great bodily injury to himself or herself or a third person or to prevent the commission of  
3 a forcible felony."

### 4 SECTION 3.

5 Said article is amended further by striking Code Section 16-3-23, relating to the use of force  
6 in defense of habitation, and inserting in its place a new Code Section 16-3-23 to read as  
7 follows:

8 "16-3-23.

9 (a) A person is justified in threatening or using force against another and does not have a  
10 duty to retreat when and to the extent that he or she reasonably believes that such threat or  
11 force is necessary to prevent or terminate such other's unlawful entry into or attack upon  
12 a habitation; however, such person is justified in the use of force which is intended or likely  
13 to cause death or great bodily harm only if:

14 (1) The entry is made or attempted in a violent and tumultuous manner and he or she  
15 reasonably believes that the entry is attempted or made for the purpose of assaulting or  
16 offering personal violence to any person dwelling or being therein and that such force is  
17 necessary to prevent the assault or offer of personal violence;

18 (2) That force is used against another person who is not a member of the family or  
19 household and who unlawfully and forcibly enters or has unlawfully and forcibly entered  
20 the residence and the person using such force knew or had reason to believe that an  
21 unlawful and forcible entry occurred; or

22 (3) The person using such force reasonably believes that the entry is made or attempted  
23 for the purpose of committing a felony therein and that such force is necessary to prevent  
24 the commission of the felony.

25 (b) A person is presumed to have held a reasonable fear of imminent threat of death or  
26 serious bodily injury to himself or herself or to another when using defensive force that is  
27 intended or likely to cause death or great bodily harm to another if the person against whom  
28 the defensive force was used was in the process of unlawfully and forcibly entering or had  
29 unlawfully and forcibly entered upon an occupied habitation and the person who uses  
30 defensive force knew or had reason to believe that an unlawful and forcible entry was  
31 occurring or had occurred."

### 32 SECTION 4.

1 Said article is amended further by striking Code Section 16-3-24.1, relating to defining  
2 habitation and personal property, and inserting in its place a new Code Section 16-3-24.1 to  
3 read as follows:

4 "16-3-24.1.

5 As used in Code Sections 16-3-23 and 16-3-24, the term 'habitation' means any dwelling,  
6 motor vehicle, camper or other similar shelter generally used for occupation overnight, or  
7 place of business, and 'personal property' means personal property other than a motor  
8 vehicle."

#### 9 **SECTION 5.**

10 Article 1 of Chapter 11 of Title 51 of the Official Code of Georgia Annotated, relating to  
11 general provisions for the defenses to tort actions, is amended by striking Code Section  
12 51-11-9, relating to immunity from civil liability for threat or use of force in defense of  
13 habitation, and inserting in its place a new Code Section 51-11-9 to read as follows:

14 "51-11-9.

15 A person who is justified in threatening or using force against another under the provisions  
16 of Code Section 16-3-21 or 16-3-23, relating to the use of force in defense of self or others  
17 or defense of a habitation, respectively, shall not be held liable in any civil action brought  
18 as a result of the threat or use of such force."

#### 19 **SECTION 6.**

20 All laws and parts of laws in conflict with this Act are repealed.